

Documenting for Performance and Discipline

John DiCarlo

Training Section

Department of State Civil Service

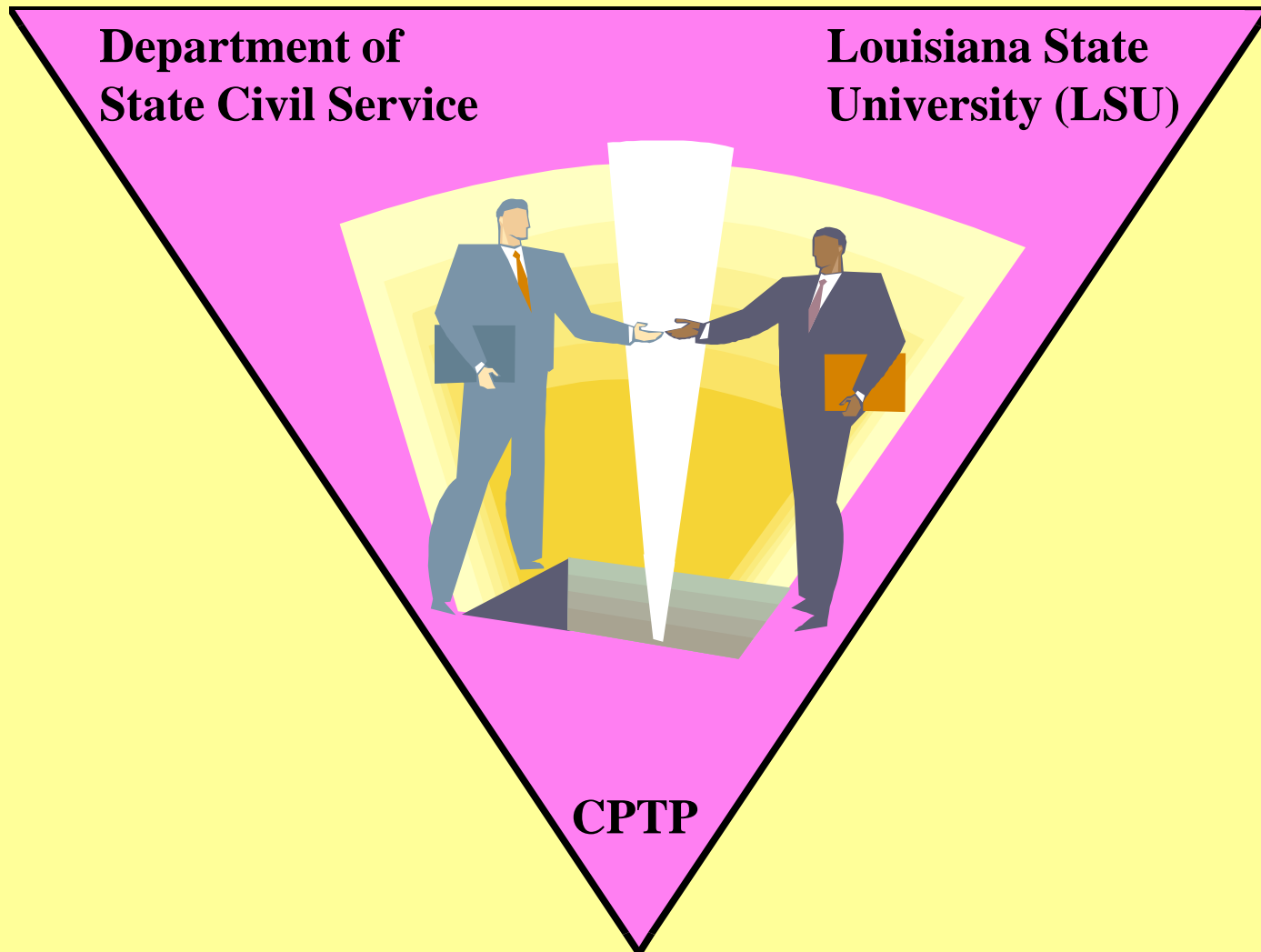
Phone: (225) 219-9430 (Baton Rouge)

e-mail: john.dicarlo@la.gov

DEPT. OF STATE CIVIL SERVICE COURSES OFFERED THROUGH THE
COMPREHENSIVE PUBLIC TRAINING PROGRAM (CPTP):
(Part of the New Minimum Training Requirement) (Effective 07/01/2008)
(Supervisory Group 1)

- Common Myths That Affect Good Supervision (DSCS)
 - Controlling Absenteeism and Tardiness (DSCS)
 - Civil Service Essentials for Supervisors (DSCS)
 - Documenting for Performance and Discipline (DSCS)
 - Performance Planning and Review (DSCS)
 - *Developing a Motivated Work Group (LSU)*
 - *Strategies for Supervisory Success (LSU)*
- Or*
- *Elements of Supervisory Practices (Part 1) (LSU)₂*

DELIVERY STRUCTURE OF TRAINING PROGRAM



Comprehensive Public Training Program (CPTP)

(225) 342-8539 (General Line) (CPTP Office)



DEPARTMENT OF STATE CIVIL SERVICE WEBSITE ADDRESS

www.civilservice.la.gov



HOUSEKEEPING ISSUES



- Class Time
- Class Breaks and Lunch
- Class Format
- Group Work
- Selection of Group Leaders
- Test Information
- Places to Eat
- Location of Snacks
- Location of Restrooms

JOB OF THE GROUP LEADER



- Speak on behalf of your group
- Write your group's answers down
- Solicit comments from each member of your group
- Keep your group on point



YOU CAN ONLY

CONTROL

WHAT YOU CAN

CONTROL

CIVIL SERVICE RULES



AGENCIES

CIVIL SERVICE
RULES

AGENCY
POLICIES



ARE NOT ALWAYS THE SAME

(C.S. SHALL VS. C.S. MAY RULES)

HISTORY OF CIVIL SERVICE



“DOCUMENTATION”



DON'T BE SCARED BY THE “D_____” WORD!



- It's not that difficult!
- Does NOT need three feet of paper to take an action!
- When it comes to documentation, quality matters much more than quantity!
- Does NOT take FOREVER to see desired goal!

“If you’re still writing, you’ve probably written too much.”



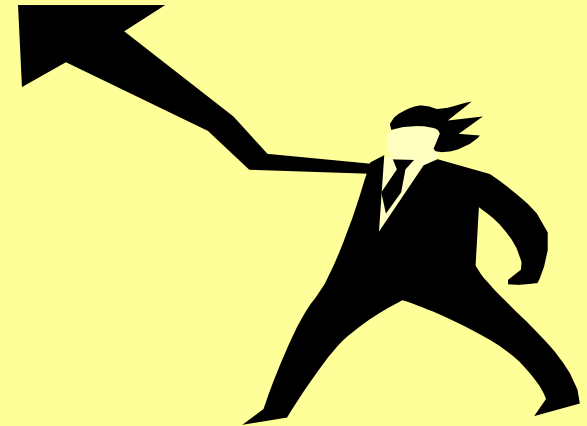
CLASS EXERCISE

IMPORTANCE OF DOCUMENTATION



EVENT

(1 Time)



PATTERN

(2 Times)

HABIT

(3 or more Times)



IMPORTANT TERMS TO KNOW

- Appeals vs. Grievances
- Rational Basis vs. Cause
- Property Rights
- Pre-Deprivation Procedure/Due Process/Loudermill
- Preponderance of the Evidence
- Contemporaneous Notes
- Condonement



DISCIPLINARY ACTION

SUCCESS FORMULA

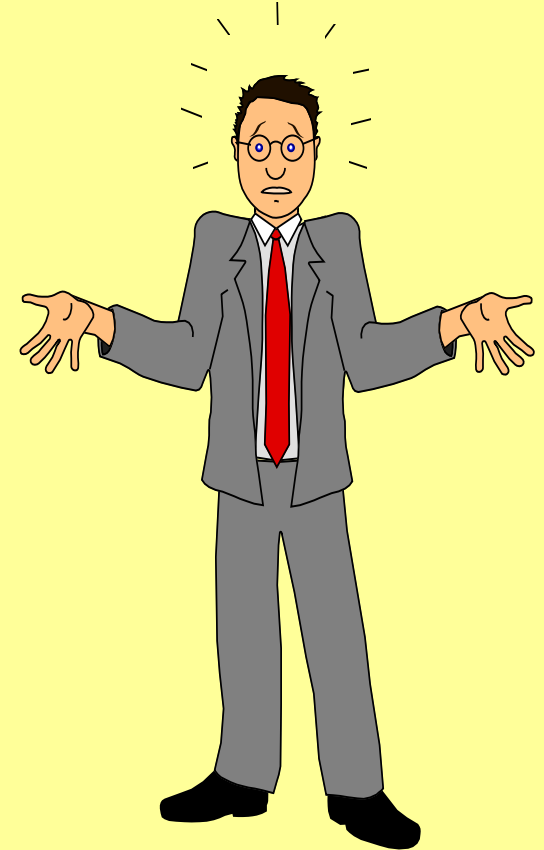
$$D + C = S$$

(Documentation) + (Communication) = (Success)



Why document?

- Supports PPR ratings.
- Rewards and recognizes good work.
- It protects you in court, appeals, or lawsuits.
- Supports your version of the events.
- Gets the employees' attention.
- More trustworthy than memory.
- Prevents rating bias over an entire rating period.



MEMORY STUDIES INDICATE



62% IS FORGOTTEN IN 1 DAY

75% IS FORGOTTEN IN 15 DAYS

78% IS FORGOTTEN IN 31 DAYS

WHEN DOCUMENTING, REMEMBER THE 4 “W’S” AND THE “H”.

W_{HO}?

Just the facts!

W_{HAT}?

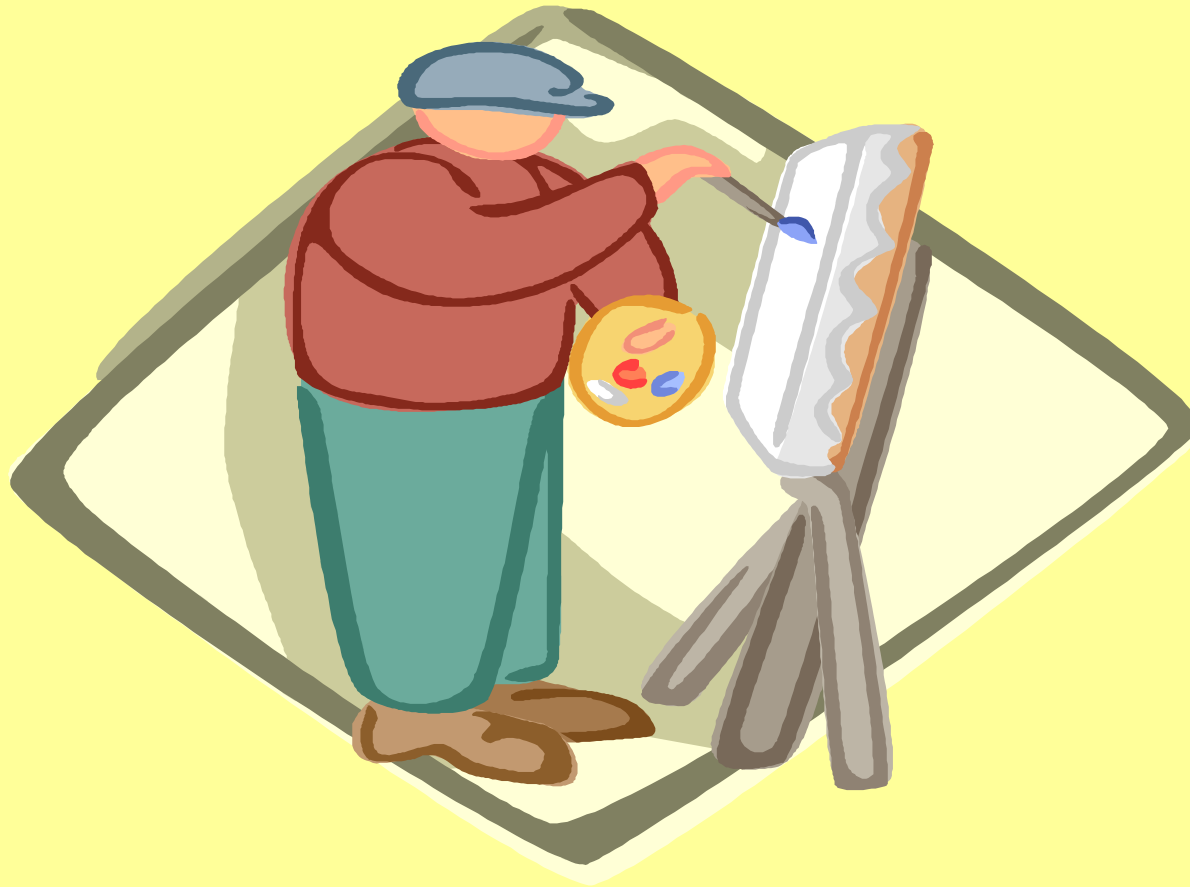
W_{HERE}?

W_{HEN}?

H_{OW}?

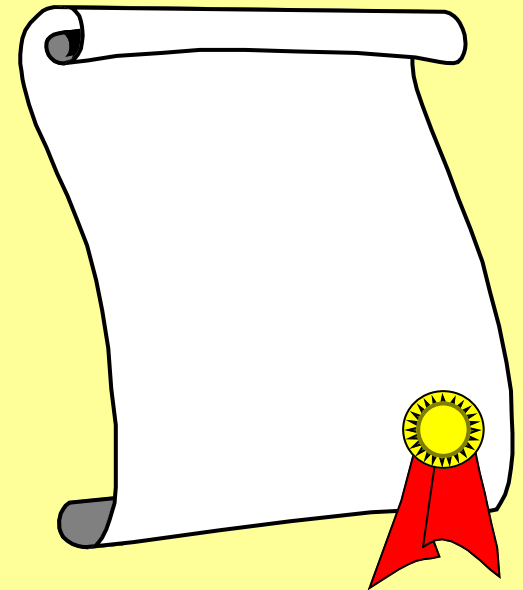


WHEN DOCUMENTING, YOU ARE THE ARTIST AND THE PAPER IS YOUR CANVAS



Tips on Documentation

- When documenting, you are the ARTIST and the paper is your canvas.
- The judge or referee is the INTERPRETER of your documentation.
- Document using objective language.
- Document observable behaviors using your five senses.
- Do not draw conclusions in your documentation. Let the judge or referee draw the conclusions.



MAKE SURE THAT ALL DOCUMENTATION PASSES THE “60 MINUTES” TEST

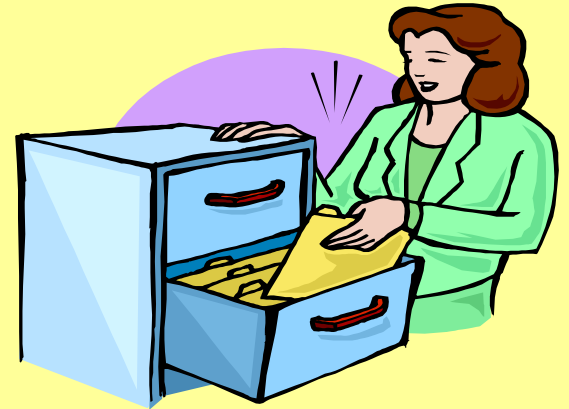


2 TYPES OF FILES

Public Access

(Subject to Public Access Requests)

- Personnel Folder



Private (Confidential)

(Subject to Subpoena and Auditors)

- PPR Folder
- Medical Folder
- Letters of Improvement



Property (take away by discipline)

- One's current job
- One's current pay that is earned
- Attained with permanent status



Non-property(rational basis to deny)

- One's expectations or hopes
- No right to own (merit increase, promotion, etc.)

Detailed, Written Reasons for Cause



- Must be more than *conclusions*.
(examples: sloppy work, insubordinate)
- State *specifics* so employee can defend himself from having his property taken away.
- For disciplinary actions, be descriptive and specific.
 - Conduct
 - Date, time, place
 - Names of pertinent persons

Rational Basis



- Job-related reason that makes sense.
- Check and balance against unreasonable actions.
- Sufficient when not taking away “property.”
- Sufficient for:
 - PPR ratings
 - Not granting merit increases
 - Not promoting someone
 - Separation of non-permanents

Withholding a Merit Increase is NOT a Disciplinary Action!



- Merit increases are NOT automatic; they should be deserved. They are not a property right.
- Not a disciplinary action to withhold one. Very limited appeal rights; usually discrimination.
- Difficult to win appeal.

Probation is a working test period!

- Last from 6 to 24 months.
- Consider separating if not fully satisfactory; probably seeing their best.
- Very limited appeal rights - usually discrimination. Difficult to prove.



Discrimination



- Illegal; unethical.
- Not job-related; rather, based on one's race, sex, religious or political beliefs, etc.
- Employee must prove it.
- May treat employees differently based on job-related behavior or performance. Don't have to treat everyone the same.

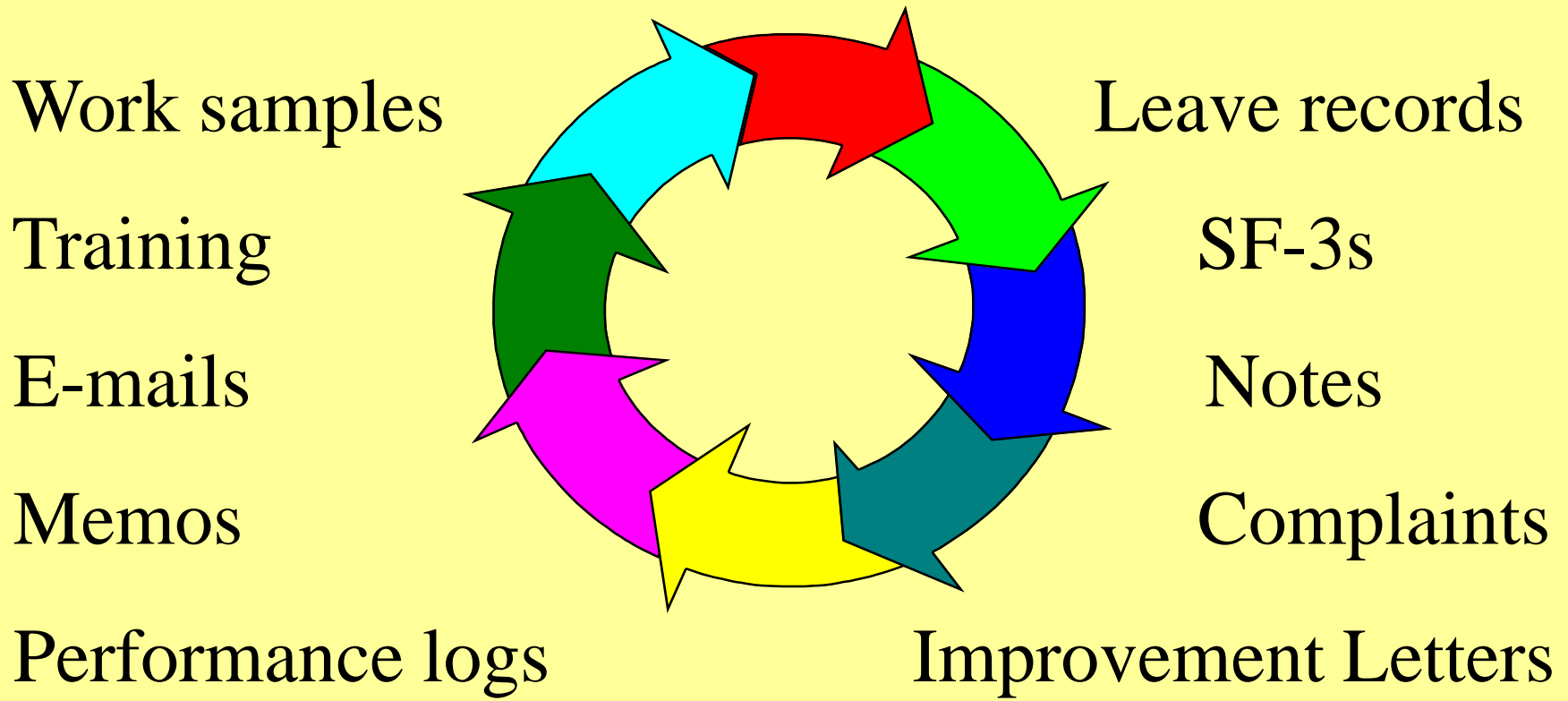
Documentation and Communication for PPR



- Communication necessary; rating should not come as surprise.
- Ratings, of “Poor” or “Needs Improvement” shall have documentation to support them. (C.S. Rule 10.6 a)
- For verbals, keep notes made at or around the time of your discussion with the employee about his behavior.
- Keep all written communication to support ratings.

PPR Documentation

Anything tangible establishing reasons for rating.



COLORING BOOK CONSPIRACY





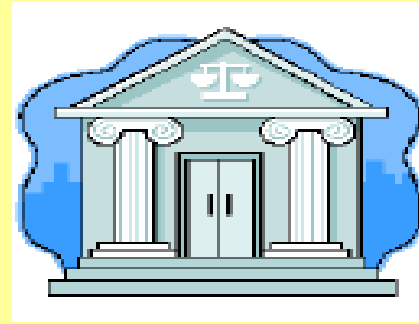
Confidential Records

Keep in private place, or, if on computer, have password protection.

- PPR ratings and comments
- Notes from counseling sessions and observations
- Letters of Improvement

Documentation for PPR

Besson Appeal



- Rule 10.6(a)...shall provide documentation to support any factor rated “Poor” or “Needs Improvement.”
- Communication is necessary; a PPR rating should not come as a surprise to an employee.
- Having documentation is not sufficient unless, during rating period, the supervisor communicated with employee about the behavior noted in the documentation.

Documentation for PPR Besson Appeal (cont.)



- Written documentation is not required to be attached to form, but, will be needed if review of rating requested.
- Verbals need not be listed on the form; but, you must be able to show, by notes written at or around time of discussions, that behavior commented upon on the form, was discussed during rating period.
- These notes do not have to be attached to form, but will be needed if there is a review of the rating is requested.

CLASS EXERCISE

RECORDING BEHAVIORS VS. DRAWING CONCLUSIONS



CLASS EXERCISE

PPR DOCUMENTATION





Appeals Are Part of the Judicial System

- Employee may appeal to the C.S. Commission (the case may be assigned to a Referee)
- Either side may ask for a review of the Referee's decision by the C.S. Commission
- May appeal to the First Circuit Court of Appeals...
- then to La. Supreme Court (in some cases up to U. S. Supreme Court)

Civil Service Appeals

(Must be in writing)

Reasons for appeal:

- Removal of permanent employee
- Disciplinary actions
- Illegal discrimination
- C.S. rule violation



Appeal must be filed:

Within 30 calendar days of your receiving written notice of action OR, if no notice or tardy notice, within 30 calendar days of the date you learned action had occurred.

3 TYPES OF APPEALS

Regular Civil Service Appeal

- Can only be filed by Permanent Status Classified State Employees as the Result of a Disciplinary Action or Removal.
- Burden of Proof is on Appointing Authority (Agency).
- Burden of Proof is preponderance of the evidence.

Discrimination Appeal

- Can be filed by any employee for any reason.
- Burden of Proof is on the employee bringing the action.
- Burden of Proof is preponderance of the evidence.

Civil Service Rule Violation Appeal

- Can be filed by any employee. Must cite a specific rule violated.
- Burden of Proof is on the employee bringing the action.
- Burden of Proof is preponderance of the evidence.



Appeals Based on Discrimination



Non-property issues - Appeals to C.S. based on discrimination are limited to 4 grounds, i.e., race, sex, religious or political beliefs. These include:

- Separation of probational employees
- PPR ratings
- No merit increase
- No promotion
- Other non-disciplinary actions



Discrimination

(cont.)

Still limited to race, sex, religious or political beliefs for:

- Disciplinary actions for permanents
- Removals of permanents



PPR Appeal Process

C.S. Rules 10.13 and 10.14

- Can have any overall rating reviewed by appointing authority or designee (Designated Reviewer).
- If the employee disagrees with the Designated Reviewer's decision, a permanent status employee has the right to have his PPR file reviewed by the C.S. Director or his designee.
- Employee cannot use agency's grievance procedure.

Severity - Punishment Must Fit Crime



Agency must consider:

1. Do you have detailed reasons for action?
2. Degree of harm to service
3. Employee's length of service
4. Employee's history (merits, PPR ratings, letters of improvement, etc.)

Pre-removal/Pre-discipline (Loudermill) Procedure

- For permanent employees
- Written or oral notice of proposed action
- Reasons for the action; description of evidence
- Reasonable opportunity to respond before you act
- Response kept attached to your letter - confidential



Progressive Discipline

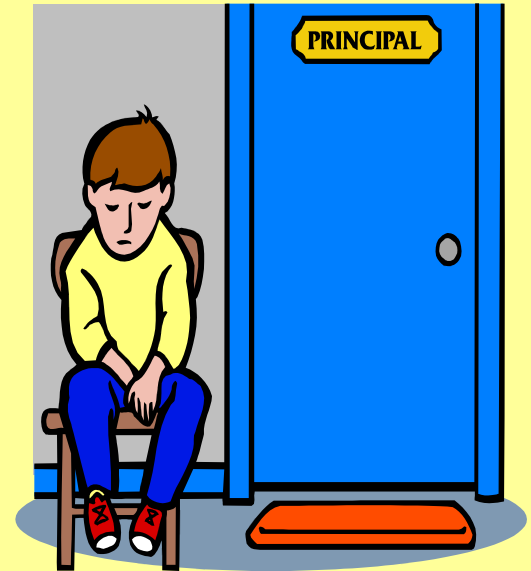
- Not in C.S. Rules
- Not always necessary
- Steps may be:

Meetings; talks

Documented counseling sessions

Letters of Improvement

Disciplinary action



CLASS EXERCISE

DISCIPLINARY ACTION DOCUMENTATION



IMPORTANT INFORMATION:

COURSE EVALUATIONS

- Anonymous
- Place them face down when finished

TEST REVIEW

- Answer as a group
- Questions are not direct questions from the actual test

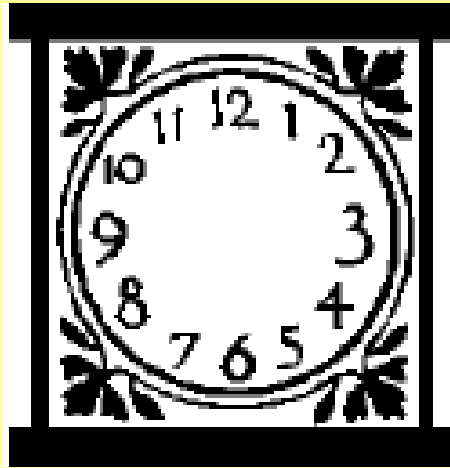
TESTS

- Do not write on the test itself.
- Only write on the answer sheet.
- A passing grade is 70 or better.
- The test is not a group activity.

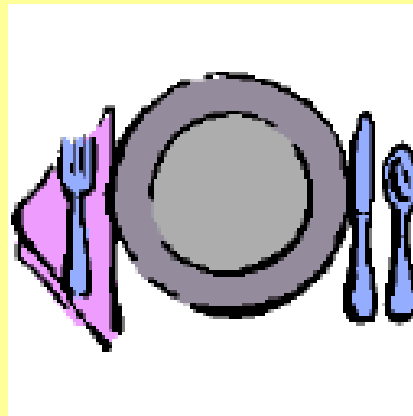
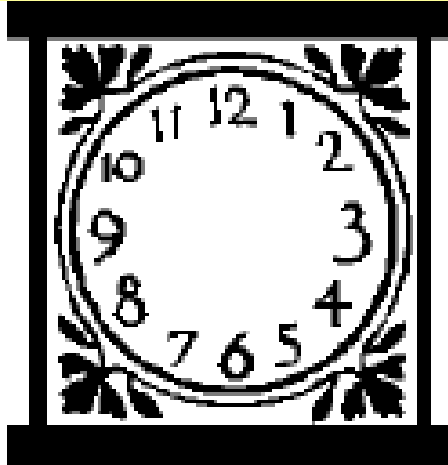


PLEASE DO NOT
FORGET TO PICK UP
YOUR CERTIFICATES OF
COMPLETION BEFORE
YOU LEAVE!

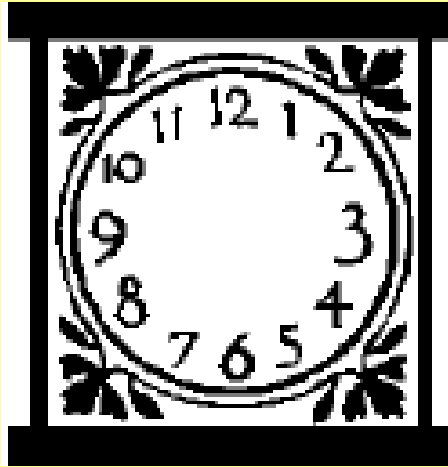
MORNING BREAK



LUNCH BREAK



AFTERNOON BREAK



PPR Situations

1

Good

Average

Bad

2

Good

Average

Bad

3

Good

Average

Bad

Discipline Situations

1

Good

Average

Bad

2

Good

Average

Bad